

§ 246.4

covered by that subpart. The regulation of rents for projects coming within the scope of "Subpart C—Subsidized Insured Projects" is preempted in its entirety by the promulgation of these regulations. The regulation of rents for projects coming within the scope of "Subpart D—HUD-Owned Projects" rests within the exclusive jurisdiction of the Department.

(b) Any state or local law, ordinance, or regulation is without force and effect insofar as it purports to regulate rents of: (1) Projects for which a determination of preemption has been made pursuant to subpart B, or (2) projects coming within the scope of subpart C or D. Compliance with such law, ordinance, or regulation shall not be required as a condition of, or prerequisite to, the remedy of eviction, and any law, ordinance, or regulation which purports to require such compliance is similarly without force and effect.

(c) It is the purpose of the Department that these regulations shall bar all actions of a board that would in any way frustrate the purpose or effect of these regulations or that would in any way delay, prevent or interfere with the implementation of any increase in rental charges approved by HUD.

(d) These regulations may be offered as a defense to a proceeding by whomsoever initiated, which may be brought or threatened to be brought against any owner, mortgagor or managing agent of a project subject to these regulations who demands, receives or retains, or seeks to demand, receive or retain, rental charges approved by HUD, or as a basis for declaratory, injunctive or other relief against any person or agency, public or private, who attempts to enforce, or threatens to enforce, any state or local law, ordinance, or regulation which is without force and effect by reason of this regulation.

(e) This part applies to mortgages insured under the National Housing Act. It does not apply to mortgages insured under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707).

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984, and amended at 58 FR 64038, Dec. 3, 1993; 59 FR 62524, Dec. 5, 1994]

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Subpart B—Unsubsidized Insured Projects

SOURCE: 44 FR 58504, Oct. 10, 1979, unless otherwise noted. Redesignated at 49 FR 6713, Feb. 23, 1984.

§ 246.4 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD, except those to which subpart C applies.

[40 FR 49318, Oct. 22, 1975. Redesignated at 49 FR 6713, Feb. 23, 1984]

§ 246.5 Rental charges.

The Department will generally not interfere in the regulation of rents by a rent control board or agency constituted under State or local laws (hereinafter referred to as board) for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents, together with any board regulations which require the mortgagor to offer a lease for a term in excess of one year, under certain conditions. This preemption may occur for such a project when the Department determines that the delay or decision of a board prevents the mortgagor from achieving a level of residential income necessary to maintain and operate adequately the project, which includes sufficient funds to meet the financial obligations under the mortgage."

§ 246.6 Initiation.

When a mortgagor determines that the permitted increase in rents as prescribed by the board will not provide a rent level necessary to maintain and operate adequately the project, and the mortgagor elects to request preemption under this subpart, it shall:

(a) File an application for whatever relief or redetermination is permitted under the State or local law and;

(b) Notify: (1) The tenants in accordance with § 246.7 of this subpart, (2) the appropriate HUD office pursuant to § 246.8, and (3) the board of the mortgagor's intention to file a request for preemption of local rent control regulation pursuant to the provisions of regulations in this subpart. This action